

FOIA Litigation Considerations

Part I



Threshold Considerations

- How does the FOIA Officer learn that the agency has been sued?
- Who will represent the agency in court?
- What part does the agency's general counsel's office play?
- Federal Programs Branch, Civil Division, U.S. Department of Justice (Jim Kovakas, (202) 514-3319)

Jurisdiction & Venue

■ A. Jurisdiction

1. United States District Courts
2. What must a requester allege in the lawsuit?
3. What is the scope of the court's power?
4. Statute of limitations

B. Venue

1. In which federal judicial district may a requester file a lawsuit?
2. District of Columbia=universal venue

Pleadings

A. The Complaint

1. Who is a proper party defendant?
2. Service of process

B. The Answer

1. Filed within 30 days of service upon the proper party
2. Must respond to each allegation
3. Must assert affirmative defenses

Standard of Review

- *De novo* standard of review
- What is the administrative record?
- Deference by court on matters of national security
- Fee waiver issues
- Arbitrary and capricious standard of review in reverse FOIA actions

Exhaustion of Administrative Remedies

- What are administrative remedies?
- How does a requester exhaust the administrative remedies?
- Constructive exhaustion
- Payment of processing fees
- Failure to exhaust administrative remedies
- Mootness

Discovery

- What is discovery?
- Forms of discovery:
 - Interrogatories
 - Requests for admissions
 - Depositions
- Scope of discovery in FOIA lawsuits
- Adequacy of search and discovery
- Discovery and the *Vaughn* declaration